

2005 AUG 18 PM 10: 01



August 17, 2005

Mr. John F. Carter  
Regional Director  
Federal Deposit Insurance Corporation  
25 Jessie Street at Ecker Square  
San Francisco, California 94105

**Re: Initial Comments and Request for Public Hearings Regarding FDIC  
Application # 20051977 – Wal-Mart Application for Insurance and Industrial  
Bank Charter**

Dear Mr. Carter:

The undersigned members of the Sound Banking Coalition – the Independent Community Bankers of America, the National Association of Convenience Stores, the National Grocers Association, and the United Food and Commercial Workers International Union – submit this letter in opposition to Wal-Mart's application for a Utah industrial bank<sup>1</sup> charter and FDIC insurance, and to request a public hearing on the matter. As noted in our August 10 letter, Wal-Mart failed to provide crucial information regarding its proposed bank in the publicly available application. Public release of this information is needed to allow for full, meaningful comment. Therefore, this letter serves as preliminary comments, and the Coalition reserves the right to submit additional comments following the public release of necessary information. In addition, the fundamental issues raised by this application by the largest commercial company in the United States to acquire a bank charter are so numerous and complex that the FDIC must hold public hearings in order to get a full airing of these issues.

Although Wal-Mart has narrowly drafted its Application to make it appear that it would use an industrial bank charter primarily to process internal transactions, Wal-Mart does not foreclose the possibility that it would eventually seek to branch and enter retail banking. To the contrary, we believe that a careful examination of Wal-Mart's application and past efforts to obtain a bank reveal that this application is a first step toward an expansion into retail banking.

Wal-Mart's application raises difficult policy issues. The mixing of banking and commerce that would occur if Wal-Mart owned a bank as well as the lack of consolidated supervision of the bank by the Federal Reserve Board threaten some of the basic underpinnings of banking regulation in the United States. These threats are particularly acute here given that Wal-Mart is the largest commercial company in the United States.

---

<sup>1</sup> Industrial banks are alternatively referred to as Industrial Loan Companies or ILCs in these comments.



Mr. John F. Carter  
August 17, 2005  
Page 2

The Federal Reserve and Chairman Alan Greenspan have repeatedly raised questions about the lack of regulation of industrial banks and the need for holding company level regulation of these banks by the Federal Reserve. The risks of industrial banks were summed up well by Federal Reserve Governor Mark Olson when he testified: "Allowing a commercial firm to operate a nationwide bank outside the supervisory framework established by Congress for the owners of insured banks raises significant safety and soundness concerns and creates an unlevel competitive playing field." Like the Federal Reserve, a number of public interest groups including the Consumer Federation of America, National Consumer Law Center, ACORN, Consumers Union, National Association of Consumer Advocates, National Community Reinvestment Coalition, and the U.S. Public Interest Research Group have raised concerns about the public policy implications of the industrial bank loophole in the Bank Holding Company Act.<sup>2</sup>

As a general matter, we believe that Wal-Mart's application should be denied because the very possibility that Wal-Mart will enter into retail banking poses an enormous, unjustifiable threat to taxpayers, consumers, small communities, small businesses, FDIC insurance, and the soundness of our banking system itself. As an industrial bank, Wal-Mart could establish banks in its retail stores, causing competitive problems for local bankers in much the same way that it has for local retailers. This would leave Wal-Mart as the only banking option in many small communities and force small businesses to hand their deposits over to, and apply for loans from, their biggest competitor. Further, as an industrial bank, Wal-Mart would not be subject to the consolidated supervision and many of the restrictions applicable to other owners of insured banks. This could make it impossible to detect financial troubles before they have an opportunity to affect the federal insurance safety net.

In addition to these policy considerations, Wal-Mart's application should be denied because Wal-Mart fails to meet the criteria that the FDIC must consider in reviewing insurance applications under Section 6 of the Federal Deposit Insurance Act. Wal-Mart fails to meet these criteria for the following reasons: (1) a Wal-Mart industrial bank would present a grave risk to the Bank Insurance Fund, (2) the application makes it possible for Wal-Mart to enter into retail banking in the future, which would have a destructive impact local communities, (3) legal and ethics issues pose a threat to Wal-Mart's financial condition and future earnings; and (4) there are serious questions about Wal-Mart meeting FDIC standards for management character and fitness.

---

<sup>2</sup> See Testimony of Travis Plunkett, Legislative Director, Consumer Federation of America and Carolyn Carter, Of Counsel, National Consumer Law Center, before the Senate Committee on Banking, Housing and Urban Affairs, hearing titled "Current Proposals Considered for Regulatory Relief Legislation," June 21, 2005.



**(1) A Wal-Mart Bank Would Pose an Enormous Threat to the Bank Insurance Fund and the Banking System Itself**

The sheer size of Wal-Mart presents a grave risk to the Bank Insurance Fund. Because of Wal-Mart's size and volume of business, the losses that the FDIC would endure if the bank or the parent company experienced financial problems could be very large. Commenting on the impact Wal-Mart's size and influence already has on dependent suppliers, Tom Rubel, CEO of consultant Retail Forward Inc. predicted that "If [Wal-Mart] ever stumbles, we've got a potential national security problem on our hands. They touch almost everything....If they ever really went into a tailspin, the dislocation would be significant and traumatic."<sup>3</sup> A company this large should not be permitted to place our banking system and the Bank Insurance Fund at a similar risk.

Wal-Mart faces particular risks that other banks, not to mention many other commercial enterprises do not. Prominent examples of these risks include financial risks due to foreign currency fluctuations and fluctuations in oil prices. For example, Wal-Mart is exposed to substantial risk when there are fluctuations in the yuan. More than seventy percent of goods sold by Wal-Mart are made in China.<sup>4</sup> Xu Jun, Wal-Mart China's director of external affairs, has pointed out that China is Wal-Mart's most important supplier in the world and noted, "If Wal-Mart were an individual economy, it would rank as China's eighth-biggest trading partner, ahead of Russia, Australia and Canada."<sup>5</sup> More than 5,000 Chinese enterprises have established steady supply alliances with Wal-Mart.<sup>6</sup>

The commercial ties between Wal-Mart and China pose particular risks because China is loosening its artificial control of the valuation of its currency. On July 21, 2005, the Chinese government dropped the yuan-dollar peg and lifted the value of the currency by more than two percent. The revaluation raised the price of Chinese goods, pressuring profit margins on an enormous proportion of the products sold in Wal-Mart. While this first step in floating the yuan resulted in a relatively modest increase of the currency, economists have estimated that China's currency policy has kept the yuan undervalued by as much as forty percent.<sup>7</sup> AG Edwards advised its clients regarding the float of the yuan: "We believe that China's decision. . .will have an immediate impact for U.S. retailers sourcing product out of China. U.S. retailers cost of goods sold will increase and, of course, their gross margins will decrease."<sup>8</sup> A sudden jump in the valuation of the yuan could have devastating consequences for Wal-Mart and, if Wal-Mart becomes as dominant in the financial services sector as it has been in other segments of the

---

<sup>3</sup> Business Week, *Is Wal-Mart Too Powerful?*, Oct. 6, 2003, available at [http://www.businessweek.com/magazine/content/03\\_40/b3852001\\_mz001.htm](http://www.businessweek.com/magazine/content/03_40/b3852001_mz001.htm)

<sup>4</sup> Jiang Jingjing, *Wal-Mart's China inventory to hit US\$18b this year*, China Business Daily, November 29, 2004, available at [http://www2.chinadaily.com.cn/english/doc/2004-11/29/content\\_395728.htm](http://www2.chinadaily.com.cn/english/doc/2004-11/29/content_395728.htm).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> Dow Jones, *Retail Stocks Lower in 'minor' China Revaluation*, July 21, 2005.

<sup>8</sup> *Id.*



Mr. John F. Carter  
August 17, 2005  
Page 4

economy, a decision made in Beijing regarding the valuation of its currency could put a Wal-Mart bank and, by extension, the Bank Insurance Fund at risk.

Wal-Mart also faces risks from rising oil prices. Wal-Mart's stock price has fallen in reaction to recent news about oil prices and the August 16 statement by CEO H. Lee Scott, Jr. that, "I worry about the effect of higher oil prices . . . I anticipate challenges as the year progresses." These risks include increases in the costs Wal-Mart must pay to transport the large volume of goods it sells as well as the risk that as consumers spend additional funds on fuel they will have less to spend at Wal-Mart. As Mr. Scott said in the August 16 call, "Our customer continues to be impacted by higher gas prices, and it is difficult to improve our expense leverage in the current environment." These financial risks faced by Wal-Mart are not similar to those faced by most banks and create unique problems due to the size and scope of Wal-Mart's worldwide supply network and operation.

These risks are particularly significant because Wal-Mart, as an industrial bank, would not be subject to Federal Reserve oversight. This leaves insufficient safeguards to ensure that this massive company will not endanger the Bank Insurance Fund. Although a Wal-Mart bank would be subject to oversight by the FDIC, the FDIC does not have the same powers to regulate the entirety of a holding company's operations as does the Federal Reserve. The Bank Holding Company Act (BHCA) provides the Federal Reserve with the authority to examine the bank holding company itself and any of its non-bank subsidiaries at any time, while the FDIC has only limited examination authority, and is unable to examine affiliates of banks unless necessary to disclose the direct relationship between the bank and affiliate and the effect of the relationship on the bank.<sup>9</sup> The Federal Reserve is also entitled to establish consolidated capital requirements to ensure that bank holding companies are a source of financial strength for the subsidiary bank. Corporate parents of ILC's are not subject to these capital requirements. Finally, the Federal Reserve has broad enforcement authority under the BHCA, and can issue cease and desist orders, impose civil penalties, and order a holding company to divest non-bank subsidiaries if it determines that ownership of the subsidiary presents a risk to the financial safety, soundness, or stability of an affiliated bank and is inconsistent with sound banking principles or the purposes of the BHCA.<sup>10</sup> The Federal Reserve is the only federal agency authorized to take such actions against bank holding companies.

The safeguards provided by Federal Reserve regulation would be necessary to protect the Bank Insurance Fund against the potential risks presented by a Wal-Mart bank. Without these safeguards, it may be impossible for problems to be identified and managed in time to prevent deficiencies and damage to the federal safety net. A Wal-Mart bank is simply a risk that United States tax payers should not be forced to take.

---

<sup>9</sup> Letter to Senator Tim Johnson from Alan Greenspan, Chairman of the Board of Governors of the Federal Reserve System, June 25, 2003, at 4.

<sup>10</sup> *Id.* at 5.



Mr. John F. Carter

August 17, 2005

Page 5

## **(2) A Wal-Mart Bank Would Have a Destructive Impact on Local Communities**

Although Wal-Mart claims that it will simply use the industrial bank charter to process credit card, debit card, and electronic check transactions from its retail locations, Wal-Mart has not denied that it will pursue retail banking in the future. When asked whether shoppers could someday shop for mortgages at Wal-Mart, financial services director Tom McLean refused to say that Wal-Mart would not offer these types of retail banking services replying instead, "We continue to look for what makes sense to the customer."<sup>11</sup> Certain statements in the filing also indicate that Wal-Mart's application is really an attempt to get its foot into the door of retail banking. For example, it states that it will offer short-term certificates of deposit to nonprofit and educational organizations, as well as "individual investors generated through deposit brokers." There is no detail about who these investors will be, and no guarantee that the bank will not offer them additional banking services.

Further, the application is only the most recent in a series of unsuccessful attempts by Wal-Mart to enter the financial services industry. In 1999, Wal-Mart tried to purchase a small savings and loan company in Oklahoma, but was stopped by provisions of the Gramm-Leach-Bliley Act.<sup>12</sup> In 2001, it attempted to partner with the Canadian Toronto-Dominion Bank, but its application was rejected as deficient by the Office of Thrift Supervision.<sup>13</sup> The application with Toronto-Dominion was explicit in noting Wal-Mart's plan to offer retail banking services in its retail stores. In fact, one of the deficiencies in the application was that the plan contemplated having retail cashiers function as bank tellers.

Most recently, in 2002, Wal-Mart filed an application to acquire an industrial bank in California. The effort met with resistance from those concerned about the mixing of banking and commerce, and was ultimately blocked by the California legislature.<sup>14</sup> While right now Wal-Mart is publicly stating that it seeks only to save the costs of a third party processor for retail transactions, its current application is merely a continuation of its past efforts to enter into retail banking.

Granting Wal-Mart an industrial bank charter would allow it to branch into more than 20 states under current law – and that number could easily grow. Wal-Mart's entrance into banking would have such a destructive impact on local communities and businesses throughout Utah and the United States that the mere possibility that it would use an industrial bank charter for this purpose should be enough reason to deny the application. Wal-Mart's retail business has frequently been criticized for having a destructive impact on local communities and businesses.

---

<sup>11</sup> Becky Yerak and Josh Noel, *Wal-Mart Plan Has Bankers on Edge*, Chicago Tribune, July 20, 2005, available at <http://www.chicagotribune.com/business/chi-0507200160jul20.1.3606468.story?coll=business-utl>

<sup>12</sup> Jenifer K. Nii, *Wal-Mart is Planning to Open a Bank in Utah*, Desertnews.com, July 19, 2005, at <http://deseretnews.com/dn/view/0,1249,600149522,00.html>

<sup>13</sup> Christopher Leonard, *Retailer Seeking Banking Inroads*, Arkansas Democrat Gazette, July 20, 2005.

<sup>14</sup> Mark Anderson, *Wal-Mart Will Look Elsewhere to Buy Bank*, Sacramento Business Journal, Oct. 2, 2002.



Mr. John F. Carter  
August 17, 2005  
Page 6

It has a pattern of entering local communities and using predatory pricing and other techniques to run all local competition out of business. Once local competition is destroyed, Wal-Mart is free to raise its prices, or even shut down its stores to open larger regional stores. There is no reason to believe that a Wal-Mart bank would not engage in the same practices and have the same effects on local banks.

A study conducted by Iowa State University revealed that, following Wal-Mart's expansion in the state, 555 grocery stores, 298 hardware stores, 293 building suppliers, 161 variety shops, 158 women's apparel stores, 293 building suppliers, and 116 pharmacies closed.<sup>15</sup> When Wal-Mart opened three Sam's Club (Sam's) stores in Oklahoma, local gas stations were initially pleased due to the business generated by traffic traveling to and from the stores. Wal-Mart quickly usurped the opportunity by providing gas below wholesale prices at its own stores, and caused local gas stations to lose a large volume of sales. A federal judge in the Western District of Oklahoma enjoined and restrained Sam's from selling motor fuel below cost as defined by the Oklahoma Unfair Sales Act, and the Tenth Circuit affirmed.<sup>16</sup> According to the Tenth Circuit, the evidence showed that "because of the volume of Sam's gasoline sales and its below-cost pricing, competition was lessened in Oklahoma City [in much of the] area surrounding Sam's stores."<sup>17</sup>

Wal-Mart has repeated this pattern – aggressively harming local businesses and competition – many times. The grocery business is a prime example. Studies by Retail Forward, a market research firm, indicate that for every one Wal-Mart "Supercenter" opened, two local groceries will close.<sup>18</sup> The following is an explanation of the devastating effect that this can have on communities:

"As the number of supermarkets shrinks, more shoppers will have to travel farther from home and will find their buying increasingly restricted to merchandise that Wal-Mart chooses to sell -- a growing percentage of which may be the retailer's private-label goods. Meanwhile, the failure of hundreds of stores will cost their owners dearly and put thousands out of work, only some of whom will find jobs at Wal-Mart, most likely at lower pay."<sup>19</sup>

Indeed, some estimate that for every one job created by Wal-Mart, two are lost. Wal-Mart has also driven many American jobs overseas. Relentlessly seeking lower prices, the company has shifted much of its purchasing power overseas, where cheap labor and minimal government

---

<sup>15</sup> Stone, *Competing with Discount Mass Merchandisers*, at [http://www.econ.iastate.edu/faculty/stone/1995\\_IA\\_WM\\_study.pdf](http://www.econ.iastate.edu/faculty/stone/1995_IA_WM_study.pdf)

<sup>16</sup> *See Star Fuel Marts, LLC, v. Sam's East, Inc.*, 362 F.3d 639, 643 (10th Cir. 2004).

<sup>17</sup> *Id.* at 649.

<sup>18</sup> *Business Week, Is Wal-Mart Too Powerful?*, Oct. 6, 2003, available at [http://www.businessweek.com/magazine/content/03\\_40/b3852001\\_mz001.htm](http://www.businessweek.com/magazine/content/03_40/b3852001_mz001.htm).

<sup>19</sup> *Id.*



regulation result in cheaper goods. Gary Gereffi, a Duke University professor who studies global supply chains, has stated that Wal-Mart is one of the "key forces" propelling global outsourcing because it controls so much of the purchasing power of the U.S. economy.<sup>20</sup> In 2004, Wal-Mart reportedly purchased \$9 billion-worth of goods directly and another \$9 billion indirectly from China.<sup>21</sup> In 2005, Wal-Mart plans to purchase more than \$2 billion in goods from India,<sup>22</sup> and to increase purchasing of Malaysian products by 20 percent.<sup>23</sup>

The adverse effect that Wal-Mart has had on local businesses, workers, and communities in the retail industry should not be permitted to repeat itself in the banking industry. An industrial bank charter would give Wal-Mart the opportunity to destroy local banks much as it has destroyed other local businesses such as grocers, pharmacists, and florists. If competitor banks are destroyed, surviving local businesses would be forced to go to their biggest competitor for deposits and loans, providing Wal-Mart with an even greater competitive advantage and creating a nightmare scenario which is a key reason for the longstanding U.S. policy prohibiting the mixture of banking and commerce.

A Wal-Mart bank also will not help the local community in Salt Lake City. Wal-Mart has indicated in its application that it will outsource many of the bank's functions (although it has failed to reveal where or to whom). Wal-Mart's application states that it will outsource its general ledger and accounting system and implies that it will outsource its information systems. Not only will this deprive the local community of jobs, the lack of information about how and where this outsourcing will occur raises troubling questions about the bank's operations and oversight. The application also pointedly says only that Wal-Mart "does not have any plans to relocate the main office within the first three years of its operations."

For these reasons, a Wal-Mart bank would have an adverse impact on local communities – including banks, other local businesses, their workers, and their customers. This appears likely to be true in Salt Lake City and Utah as well as the rest of the country. Therefore, if the convenience and needs of the community are to be considered, the Wal-Mart application must be denied.

---

<sup>20</sup> Interview by Frontline with Gary Gereffi, Professor, Duke University (Sept. 9 2004), available at <http://www.pbs.org/wgbh/pages/frontline/shows/walmart/interviews/gereffi.html>.

<sup>21</sup> The Economist, *Wal-Mart: How Big Can it Grow?*, April 15, 2004, available at [http://www.economist.com/business/displayStory.cfm?story\\_id=2593089](http://www.economist.com/business/displayStory.cfm?story_id=2593089).

<sup>22</sup> India Business Insight, *Government to Set Up Panel to Help Wal-Mart Source Goods*, June 3, 2004.

<sup>23</sup> Namnews, *Malaysia: Wal-Mart To Increase Malaysia Sourcing By 20%*, Aug. 5, 2005, at <http://www.kamcity.com/namnews/asp/newsarticle.asp?newsid=23489>.



Mr. John F. Carter  
August 17, 2005  
Page 8

### **(3) Wal-Mart's Legal and Ethical Problems Present Serious Risks to its Financial Condition and Future Earning Potential**

Wal-Mart is one of the most often sued companies in history. Wal-Mart was reportedly sued 4,851 times in 2000 — or nearly once every two hours, every day of the year.<sup>24</sup> Wal-Mart continues to be besieged by litigation. These lawsuits create enormous potential liabilities that could eventually lead the company, and, if it acquires one, its bank to fail.

For example, an employment discrimination class action is currently pending in which the plaintiffs, over 1.5 million current and former female employees, could be entitled to as much as \$10 billion in back pay, punitive damages, and raises. The case may lead to a very expensive judgment or settlement. In addition, Wal-Mart recently has entered into an \$11 million settlement agreement over a federal investigation of its labor practices and been fined \$3.1 million for violations of the Clean Water Act. These troubles could also scare away investors, require expensive fixes, and lead to a decrease in profits and stock prices.

The cases cited above are just a small, recent sampling of the lawsuits that have been brought against Wal-Mart. The potential liabilities stemming from present and future lawsuits create huge financial risks for the company. In May of 2005, a group of institutional investors holding more than \$545 million worth of Wal-Mart stock voiced concern about an apparent breakdown in the company's legal and regulatory controls. The group, which includes William C. Thompson Jr., the comptroller of New York City, stated that they were "deeply concerned about contingent liabilities and negative effects on the company's stock price and reputation," and urged the company to establish a special committee of independent directors to review and report on the company's legal and regulatory controls.<sup>25</sup>

The shareholders warned the company that "recent reports of legal and regulatory non-compliance raise serious concerns about the adequacy of the company's controls," and that "the frequency of the reports suggests that non-compliance with internal standards, as well as with laws and regulation, may be far too commonplace at Wal-Mart."<sup>26</sup> The letter cited raids of 60 Wal-Mart stores in 21 states by U.S. federal agents that resulted in the arrest of 250 illegal immigrant workers and the \$11 million settlement mentioned above, and a 2005 settlement with the U.S. Department of Labor involving more than 24 violations of child labor laws in three states.

---

<sup>24</sup> Richard Willing, *Lawsuits a Volume Business at Wal-Mart*, USA Today, Aug. 13, 2001, available at <http://www.nfsi.org/walmart/Lawsuits%20a%20volume%20business%20at%20Wal-Mart.htm> (last visited Aug. 2, 2005).

<sup>25</sup> Letter from William C. Thompson, Jr., Comptroller, The City of New York, *et. al.*, to Roland A. Hernandez, Chair, Audit Committee of the Board of Directors, Wal-Mart Stores, Inc. 1 (May 25, 2005) available at [http://www.comptroller.nyc.gov/press/2005\\_releases/PR05-06-067.shtm](http://www.comptroller.nyc.gov/press/2005_releases/PR05-06-067.shtm).

<sup>26</sup> *Id.*



Mr. John F. Carter  
August 17, 2005  
Page 9

The shareholders also voiced concern about a recent corporate scandal. Former Wal-Mart Vice Chairman Thomas Coughlin reportedly was forced to resign from Wal-Mart's board after an internal investigation alleged that he abused his expense account and used fraudulent invoices to obtain reimbursements. Coughlin allegedly informed co-workers that the funds were actually a "round-about way" of compensating him for out-of-pocket expenses he made to wage an anti-union campaign involving bribes.<sup>27</sup> The shareholder letter also noted that the employee who reported Coughlin's suspect transactions was subsequently fired. If it is discovered that Wal-Mart executives have been misusing company funds to finance illegal anti-union activities, this could lead to further litigation, reduce investor confidence in the company, and have serious financial consequences.

Wal-Mart's increasingly negative public image has led to countless organized challenges from citizens and local governments seeking to keep Wal-Mart out of their communities.<sup>28</sup> These efforts could also pose a threat to Wal-Mart's future growth and overall financial health.

Wal-Mart's pattern of legal and regulatory non-compliance is particularly concerning because, as an Industrial bank, it would not be regulated by the Federal Reserve as are other bank holding companies. Therefore, the potential financial impact of Wal-Mart's frequent legal and regulatory violations and resulting liabilities may not be detected in time to prevent financial problems before they endanger the bank and the Bank Insurance Fund. As Wal-Mart shareholders have themselves cautioned, "the risks associated with a compliance breakdown are especially onerous for Wal-Mart and its shareholders in light of the company's large size and market capitalization."<sup>29</sup>

#### **(4) Concerns about Wal-Mart Meeting FDIC Standards for Management Character and Fitness**

One of the criteria by which the FDIC must evaluate this application is the general character and fitness of management. We sincerely hope that any unproven claims against Wal-Mart are false, and that past violations will not be repeated, but Wal-Mart's existing track record of legal and ethical violations is too much to ignore. Under these circumstances, we do not believe that Wal-Mart's management should be extended the authority and responsibility that comes with an industrial bank charter and FDIC insurance, particularly in light of the fact that Wal-Mart will not be subject to consolidated supervision by the Federal Reserve.

---

<sup>27</sup> James Bandler & Ann Zimmerman, *Petty Cash: A Wal-Mart Legend's Trail of Deceit*, Wall Street Journal, Apr. 8, 2005, available at <http://mindfully.org/Industry/2005/Wal-Mart-Coughlin8apr05.htm>.

<sup>28</sup> See, e.g., Julie Edgar, *Township May Shut Door on Wal-Mart*, Detroit Free Press, July 27, 2005; Laura Counts, *'Super' Grocery Outlets Banned in Oakland; Lawmakers Vote to Turn Away Wal-Mart and Target*, Alameda Times-Star, Oct. 23, 2003; *Wal-Mart Hits Big Apple Pothole*, CNNMoney.com, Feb. 24, 2005; Russell Max Simon, *Wal-Mart Battle Comes to Santa Fe*, Albuquerque Journal, April 24, 2004, at Journal North Pg. 1; Donal O'Connor, *City Urged to Say No to Wal-Mart; Crowd Cheers as Speakers Blast U.S. Retail Giant*, Stratford Beacon Herald, June 21, 2005, at News Pg. 1.

<sup>29</sup> Letter from William C. Thompson, Jr. at 2.



Mr. John F. Carter

August 17, 2005

Page 10

The reports of violations of labor and environmental laws, alleged discrimination in employment and sales practices, and negative impacts on communities raise questions about the character of Wal-Mart's management. The picture these allegations paint is just what Wal-Mart's shareholders found – that breaking laws and regulations is “far too commonplace” at Wal-Mart.

Many of Wal-Mart's shareholders have expressed concern regarding the ethical lapses of the company's management. With respect to the scandal over Coughlin's alleged misuse of company funds, a shareholder group stated that the incident merely “bolstered the public perception of a culture of non-compliance and disregard for ethical standards within the ranks of Wal-Mart management.”<sup>30</sup> In light of Wal-Mart's practices and legal problems, the FDIC cannot assure itself that Wal-Mart's management will instill a culture of compliance and ethical practices at its bank that will protect its customers and the public.

\* \* \*

Wal-Mart's application for an industrial bank is troubling on many fronts and should be rejected. It does not meet the basic legal requirements upon which the FDIC judges such applications and it would open so broadly the ILC loophole in the BHCA that the long-time separation of banking and commerce would no longer be a recognizable principle. Concerned taxpayers, consumers, small businesses and bankers should be entitled to present facts concerning the destructive impact that a Wal-Mart industrial bank would have on the convenience and needs of their communities, and further facts must be presented to elaborate on the financial history and condition of the institution, its future earning prospects, the adequacy of its capital structure, the character and fitness of its management, and the risk that the depository institution will present to the deposit insurance fund. Written submissions during the comment period are insufficient to make an adequate presentation of these issues and facts to the FDIC, making a public hearing necessary. The need for a public hearing is particularly pressing due to Wal-Mart's failure, as noted in our August 10 letter, to disclose crucial information about its proposed bank in the public application.

Respectfully,

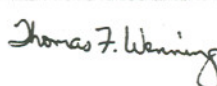
Sincerely,



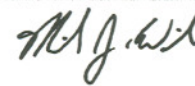
Vice President, Congressional Relations  
Independent Community  
Bankers of America



Senior Vice President  
Government Relations  
National Association of Convenience Store



Senior Vice President  
and General Counsel  
National Grocers Association



Legislative and Political Affairs Director  
United Food and Commercial  
Workers International Union

cc: Alan Whitchurch, Incorporator

<sup>30</sup> *Id.*